

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ELEAZAR Z. GARCIA,

Plaintiff,

vs.

DAVID W. COOMBSJR., in his  
individual capacity; and JACOB P.  
BETSWORTH, in his individual  
capacity,

Defendants.

**4:22CV3019**

**MEMORANDUM  
AND ORDER**

On February 23, 2022, the court granted Plaintiff permission to proceed in forma pauperis and ordered the Plaintiff to pay an initial partial filing fee of \$232.94 within 30 days pursuant to 28 U.S.C. § 1915(b)(1), which requires Plaintiff to pay an initial partial filing fee in the amount of 20 percent of *the greater of* Plaintiff's average monthly account balance or average monthly deposits for the six months preceding the filing of the Complaint. Here, the court found the initial partial filing fee to be \$232.94 based on an average monthly account balance of \$1,164.73.<sup>1</sup> Plaintiff was warned that if he failed to pay his initial partial filing fee without an extension of time having been granted, "his case will be subject to dismissal." (Filing 9.)

After the court issued that order, Plaintiff filed a "Certificate" signed by a general notary stating that Plaintiff's average deposits or average balance for the past six months is "\$100,00." (Filing 10.) Plaintiff also filed a copy of a "CSI Inmate Pay Report" for January (no year specified) showing his "regular" monthly pay as \$90.59

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<sup>1</sup> This calculation was derived from the Nebraska Department of Correctional Services' certification of Plaintiff's monthly institutional account for the six-month period of August 2021 through January 2022. (Filing 8.)

and including a handwritten notation, presumably from Plaintiff, stating: “This is my monthly pay, each month. I don’t make over \$90.00 per month. So there is a mistake on what you think I make. Please make adjustments to my monthly ballance.” (Filing 11.) Plaintiff followed these filings with a Motion to Proceed Without Prepayment of Fees, Costs, or Security stating that “he makes less than the amount expressed by the court, per month of income derived by working in Nebraska State Penitentiary” and that he should be allowed to proceed without prepayment of fees, costs, or security. (Filings 12 & 13.) Today, Plaintiff has filed with the court \$5.00 as his initial partial filing fee. (Docket Sheet Entry Dated April 4, 2022.)

Plaintiff seems to misunderstand the meaning of 28 U.S.C. § 1915(b)(1), which requires Plaintiff to pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff’s average monthly account balance or average monthly deposits for the six months preceding the filing of the Complaint. The six-month trust-account information filed with the court by the Nebraska Department of Correctional Services clearly shows that Plaintiff’s average monthly account balance<sup>2</sup> exceeded the average monthly deposits made into his account, so that is the amount on which his initial partial filing fee must be based. Twenty percent of the average monthly account balance is \$232.94, as previously ordered. After subtracting the \$5.00 initial partial filing fee Plaintiff filed with the court today, the amount still owed is \$227.94 in order to proceed with this action. Section 1915(b) is written in mandatory terms (“the prisoner shall be required to pay”), leaving no discretion to the district court to waive any part of an in forma pauperis prisoner’s filing fee.

Accordingly,

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<sup>2</sup> Plaintiff’s account balance was \$1,710.53 as of 8/31/21; \$1,555.54 as of 9/30/21; \$1,243.04 as of 10/31/21; \$968.21 as of 11/30/21; \$933.73 as of 12/31/21; and \$577.35 as of 1/31/22. Deposits to Plaintiff’s account during the same time period were \$143.13; \$258.87; \$120.69; \$94.57; \$419.34; and \$124.36. (Filing 8 at CM/ECF pp. 2-7.)

IT IS ORDERED:

1. Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Filings 12 & 13) is denied as moot. Plaintiff has already been granted leave to proceed in forma pauperis.

2. Plaintiff must pay the remaining balance of his initial partial filing fee in the amount of \$227.94 within 30 days, unless the court extends the time in which he has to pay in response to a written motion.

3. After payment of the initial partial filing fee, Plaintiff's institution must collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2) and forward those payments to the court.

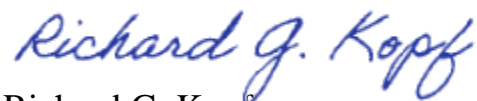
4. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff's institution.

5. The clerk's office is directed to set a pro se case management deadline in this case using the following text: **May 4, 2022**: initial partial filing fee payment due.

6. Plaintiff is advised that, following payment of the initial partial filing fee, the next step in Plaintiff's case will be for the court to conduct an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2). The court will conduct this initial review in its normal course of business.

DATED this 4th day of April, 2022.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive style with a large, stylized "K" and a long, sweeping underline.

Richard G. Kopf  
Senior United States District Judge